

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MOUSSA KOUYATE, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

THE HARVARD DRUG GROUP L.L.C. d/b/a
RUGBY LABORATORIES,

Defendants.

NOTICE OF MOTION

Case No. 1:24-cv-06223-GHW-SDA

ORAL ARGUMENT REQUESTED

TO THE COURT AND ALL PARTIES AND COUNSEL:

Defendant The Harvard Drug Group L.L.C. d/b/a Rugby Laboratories (“THDG”) moves under Rule 9(b) and 12(b)(6) for this Court to grant its Motion to Dismiss and dismiss plaintiff Moussa Kouyate’s (“plaintiff”) Complaint with prejudice.

This motion is made pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6), and is based on the following grounds: (1) plaintiff’s claims are preempted by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.* (“FDCA”) and supporting regulations; (2) even if plaintiff’s claims were not preempted, the Court should dismiss or stay this case because the Food and Drug Administration (“FDA”) has primary jurisdiction over the issues raised in the Complaint; and (3) plaintiff has failed to state a claim for relief under any of his stated cause of action.

This motion is based on this Notice of Motion, the attached Memorandum of Law, and upon such other written and oral argument as may be presented to the Court.

Dated: January 17, 2025

Respectfully submitted,

/s/ Andrew D. Kaplan

Andrew D. Kaplan (*admitted pro hac vice*)

Rachael Padgett (*admitted pro hac vice*)

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